



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/629,128

07/29/2003

Joseph M. Asher

CF-84

5903

64558 7590 05/30/2007  
FISH & NEAVE IP GROUP  
ROPES & GRAY LLP  
1211 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036-8704

EXAMINER

HAQ, NAEEM U

ART UNIT

PAPER NUMBER

3625

MAIL DATE

DELIVERY MODE

05/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/629,128	<b>Applicant(s)</b> ASHER ET AL.	
	<b>Examiner</b> Naeem Haq	<b>Art Unit</b> 3625	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because:

The Applicants have argued that support for the limitation "...after the announcement of the current bid" in claim 72 can be found in paragraphs 50 and 62. The examiner respectfully disagrees. While these paragraphs do teach retracting a bid before the bidding period expires. They do not teach or suggest to one of ordinary skill in the art of retracting a bid "...after the announcement of the current bid." For this reason, the examiner maintains the rejection of claim 72 under 35 U.S.C. 112, first paragraph.

The Applicants have also argued that the rejection of claims 36, 37, 88, and 89 under 35 U.S.C. 112, second paragraph is improper because the metes and bounds of the claims are clear to one of ordinary skill in the art. The examiner respectfully disagrees. As noted in the Final Office Action, these claims do not recite the what happens when the conditional statement is false. The examiner notes that any conditional statement (e.g. an if statement) has two logical outcomes: true or false. By not reciting what happens when the conditional statement is false, the Applicants are failing to provide a clear warning to others as to what constitutes infringement of the patent. Moreover, the examiner notes it is conceivable for the conditional statement in the claims to evaluate to false because the Applicants' specification does not explicitly preclude this outcome from happening. Therefore the metes and bounds of the claims are unclear? For this reason, the examiner maintains the rejection of these claims.

The Applicants have also argued that the rejection of claims 39 and 91 under 35 U.S.C. 112, second paragraph is improper because one of ordinary skill in the art would understand the term "substantially". The examiner respectfully disagrees. The metes and bounds of the claims are not clearly defined.

Finally, the Applicants have argued that the rejection of claims 1, 19-22, 34, 35, 47, 73-76, 86, 87, and 100 under 35 U.S.C. 103(a) is improper because the cited references fails to teach or suggest the limitation "...cause the first workstation to display the first animated character as an animated auctioneer operable to announce a current bid for an item." The examiner respectfully disagrees. Melkomian teaches that traders are able to see and hear each other in the form of an avatar (i.e. graphical image) ([0063]). Therefore, the avatar of Melkomian is an auctioneer because the Applicants' specification teaches that the auctioneer is presented as a graphical image (see Figure 5, "522"). The Applicants have also argued that the combination of Melkomian and Gottsman is improper because the references are incompatible. The examiner disagrees because Gottsman teaches displaying an agent (i.e. graphical image) based on a user's profile. The nexus between Melkomian and Gottsman is an online commerce site that uses graphical images in the form of avatars and agents. For these reasons, the examiner maintains the art rejection.

**NAEEM HAQ**  
**PRIMARY EXAMINER**

